

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

ARGENBRIGHT SECURITY, INC.

Employer

and

Case No. 29-RC-9683

LOCAL 1105, COMMUNICATIONS  
WORKERS OF AMERICA, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Jonathan Chait, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned:

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Argenbright Security, Inc., herein called the Employer, is a domestic corporation, with its principal office and place of business located in Atlanta, Georgia, and another office located at 450 7<sup>th</sup> Avenue, New York, New York, and that it is engaged in providing security and related services to businesses, residential communities, and government entities. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct

of its business operations, provided services valued in excess of \$50,000 to various enterprises located in the State of New York, which are directly engaged in interstate commerce.

Based on the stipulation of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

4. Local 1105, Communications Workers of America, AFL-CIO, herein called the Union, seeks an election in a unit comprised of all full-time and regular part-time fire safety directors and deputy fire safety directors employed by the Employer within the five boroughs of New York City. The Employer takes the position that the employees in the petitioned-for unit are guards within the meaning of Section 9(b)(3) of the Act; and, therefore, as the Petitioner admits non-guards to membership, it is not eligible for certification in the unit sought. Accordingly, the Employer asserts that the petition fails to raise a question concerning representation. It is well settled that Section 9(b)(3) of the Act prohibits the Board from certifying any labor organization, like the Petitioner, as a bargaining representative of statutory guards when the union also admits to its membership employees other than guards. However, for the reasons set forth below, I find that the petitioned-for classifications of fire safety director and deputy fire safety director are not statutory guards and therefore, the continued processing of the petition is warranted.

The Employer presented the testimony of Richard Marinaro, the Employer's Regional Manager for New York and New Jersey commercial business, who has been employed by the Employer for 17 years. Marinaro testified that the Employer, which has approximately 120, 000 security personnel nationwide, employs fire safety personnel in New York City only. Pursuant to New York City Local Law 5, fire safety directors and deputy fire safety directors<sup>1</sup> must be employed in certain commercial and municipal buildings. Argenbright employs approximately 130 such employees in 65 buildings throughout New York City. According to the testimony of Regional Manager Marinaro, fire safety directors are responsible for the implementation of fire safety plans in customers' buildings, fire drills, training fire wardens, and building inspection and patrol. A building's fire safety plan outlines action to be taken in the event of an alarm, including deployment of fire teams, public address announcements, evacuation of building occupants, and notification to the New York City Fire Department. Fire safety directors operate, in large part, from a fire command station located in their building. According to Regional Manager Marinaro, the fire command station is the central location where alarms are generated when smoke detectors, sprinkler heads, pumps or fans are activated.

Deputy fire safety director, Fred Jonas, and fire safety director, Alfred Vasquez, testified in greater detail on behalf of the Petitioner regarding their duties. Deputy fire safety director Jonas has worked for nine-and-a-half years in a Verizon building located at 88-08 164<sup>th</sup> Street in Jamaica, Queens. Vasquez has been a fire safety director or

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<sup>1</sup> Hereinafter, all references to fire safety director shall be understood to include both fire safety directors and deputy fire safety directors, unless otherwise noted. Documents provided by the Union indicate that there is little difference in the job descriptions of the two classifications. Petitioner's Exhibit 2, Fire Safety

deputy director since 1980 in the Bronx County courthouse. According to Vasquez, the multi-phase training and certification process for fire safety directors and deputy fire safety directors is the same. The first phase consists of completing a college-accredited course; the second phase entails passing a written test; and the third phase consists of an on-site test conducted by the New York City Fire Department. Each time a fire safety director or deputy fire safety director relocates to a different building, he or she must be recertified for that particular building by the fire department.

The duties of certified fire safety directors and deputy fire safety directors, which are essentially identical, are outlined in individual building Fire Safety Plans. They must be familiar with the building's fire safety plan, select and train employees for the fire safety team or brigade, update fire brigade organizational charts, conduct fire drills, report to the fire command station in the event of a fire alarm or other emergency, conduct inspections of fire safety systems, and report conditions of an alarm or emergency to the fire department and building owner. The building Fire Safety Plans also include floor plans, daily and monthly on-site inspection checklists, organization charts and job descriptions of fire team members, and evacuation instructions. Jonas and Vasquez confirmed that their responsibilities included operating the fire command station, training building personnel as members of the fire brigade, conducting regular inspections, maintaining reports in an on-site log book, testing fire systems devices, and conducting fire drills. Inspections cover smoke detectors, manual alarms, water flow detectors, sprinkler systems, emergency signage and lighting, fire extinguishers, and public address systems. In the event of a fire alarm (actual or false), fire safety directors

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Plan for Bronx County Court, Appendix B, sets forth the duties of the deputy fire safety director as follows: "Performs the duties of the fire safety director in his absence."

report to the fire command station, contact fire brigade members, communicate with building occupants via the public address system, and communicate with fire department personnel who respond to the alarm. Other interaction with the fire department occurs during annual inspections by the High Rise Unit, annual inspections of books and records by the local firehouse, and submission of incident reports concerning fires and alarms.

Fire safety directors are also responsible for detecting and reporting violations of Local Law 5. To that end, fire safety directors generate incident reports and daily and monthly inspection reports for their building. The Employer provided examples of reports compiled by fire safety directors: a Monthly Inspection Update and an Alarm Activation Record for May 2001. The Monthly Inspection Update indicates “Conditions Found Not in Compliance,” such as the lack of keys at the fire command station and improperly placed fire extinguishers. The Alarm Activation Record describes specific instances in which an alarm -- either actual or false -- was activated. These reports are forwarded to the Employer’s supervisors and to building owners or managers. Thereafter, it is the customer’s responsibility to correct any reported fire safety violations. According to Marinaro, when customers or building owners fail to remedy fire safety violations, fire safety directors simply continue to report the violation in subsequent reports. Marinaro testified that non-compliance with Local Law 5 may lead to fines or imprisonment; however, such action is taken by the New York City Fire Department.

Jonas and Vasquez also testified about their responsibilities and authority with respect to fire safety violations. These employees testified that fire safety directors employed by the Employer have no authority to remedy or punish violations of Local Law 5. According to fire safety director Vasquez, who works in the Bronx County

courthouse, violations of Local Law 5 related to the courthouse building are reported to management of the Employer and to a municipal employee who is the Chief of the Fire Safety Team. In the case of an individual violating no-smoking rules at the Bronx County courthouse, fire safety director Vasquez speaks to the offender; however, if the smoker refuses to comply, Vasquez reports the incident to a court officer who “takes it from there.” Deputy fire safety director Jonas testified that, under similar circumstances, he would ask the individual not to smoke, then report them to his supervisor or the building owner. Deputy fire safety director Jonas also testified that, in the event a fire warden was not performing his or her duties, Jonas would speak to the warden’s supervisor and “straighten it out.” According to Jonas, inspection and incident reports may include writing up individuals who violate the fire law. These reports are then provided to the Employer and building management with no further action taken by the fire safety director. There is no evidence in the record that fire safety directors issue citations to individual offenders.

Deputy fire safety director Jonas also testified that he “walks the building” daily with an on-site checklist. Jonas does not punch a watch clock in the course of his rounds. Neither Jonas nor Vasquez wear uniforms, name tags, badges, or carry weapons, 2-way radios, or other security devices. They did not submit authorizations for background checks when hired by the Employer’s predecessor<sup>2</sup> and they are not bonded. According to both Jonas and Vasquez, fire safety directors do not interact with New York City police. They are not deputized. They do not monitor buildings with surveillance equipment. They do not issue visitor passes, sign visitors in and out of buildings or

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<sup>2</sup> Both Jonas and Vasquez were originally hired by Ogden which was succeeded by UNICCO before the Employer assumed the business.

inspect parcels. They are not responsible for monitoring loitering or trespassing. Jonas testified that fire safety directors do not interact with building security officers unless, as is the case in some buildings, security officers are members of the fire brigade.<sup>3</sup> The fire command station is not connected to the security system which monitors doors and windows in the Verizon building where Jonas works. Fire safety directors do not substitute for security officers. Fire safety directors do not report or record security incidents.

Moreover, neither Jonas nor Vasquez are required or authorized to take action in the event of suspicious activity or a strike. Jonas testified that his duties did not change during a labor dispute between Verizon and the Petitioner which occurred approximately one-and-a-half years ago. Rather, according to Jonas, during the strike, the security force in his building was increased. Vasquez testified that, although no strike has involved his building, he has never received instruction or authorization to take any action in the event of a labor dispute.

Section 9(b)(3) of the Act defines a guard as “any individual employed . . . to enforce against employees and other persons rules to protect the property of the employer or to protect the safety of persons on the employer’s premises.” The Board has found that employees who protect the property of an employer’s customers are guards.

*Armored Motor Service Co.*, 106 NLRB 1139 (1953) (armored truck drivers); *Brinks, Inc.*, 226 NLRB 1182 (1976) (unarmed courier-drivers.). In *Purolator Courier Corp.*, 266 NLRB 384, 385 (1983), the Board explained that the duties of a statutory guard must involve “directly and substantially, the protection of valuable property of the employer’s

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<sup>3</sup> It is noted that the parties stipulated that there are no security officers employed by the Employer in the same buildings where Fire Safety directors or Deputy Fire Safety directors are assigned.

customers.” Cases in which fire safety personnel have been found to be guards involved employees charged with typical guard functions. *MGM Grand Hotel*, 274 NLRB 139 (1985) (fire safety personnel monitored exit alarms, motion detectors and other security systems); *Reynolds Metal Co.*, 198 NLRB 120 (1972) (firemen stationed at company gate to check parcels and remove violators); *North American Aviation*, 161 NLRB 297 (1966) (patrol buildings during strike). Most recently, in *Boeing Co.*, 328 NLRB No. 28 (1999), the Board delineated the types of responsibilities which define traditional security functions, including enforcement and authority to compel compliance of rules against other employees, training in weapons and security procedures, conducting security rounds, and wearing guard uniforms or insignia. The Board also stated that these guard-type responsibilities must be more than a “minor or incidental” aspect of an employee’s duties. *Id. at 3*.

The Board has held that enforcement of rules limited to fire and safety is not sufficient to confer guard status, particularly where such enforcement is not an essential part of the job. In *BPS Guard Services, Inc. d/b/a Burns International Security Services*, 300 NLRB 298 (1990), firefighters were responsible for warning and reporting violators of no-smoking rules as well as other safety-related regulations such as tripping or falling hazards, improper lighting, horseplay or other conditions that might cause personal injury or property damage. The evidence in that case showed that the firefighters spent most of their time checking for fire and safety violations. The Board held that the firefighters were not guards, noting that the rules which firefighters enforced against other employees were limited in scope and only incidental to their fire safety responsibilities.



Applying the test set forth in Section 9(b)(3), with guidance from the Board's decision in *BPS*, it appears from the record in the instant case that fire safety directors and deputy fire safety directors are not statutory guards inasmuch as they are not charged with responsibilities traditionally assigned to security officers. Other than fire safety violations, the employees in the two job classifications at issue have no obligation to enforce rules *against other employees* for the purpose of protecting the customer's property or the safety of occupants. Local Law 5, which fire safety directors and deputy fire safety directors uphold, pertains exclusively to fire safety. However, even in instances of fire safety violations by individuals (such as smoking in non-smoking areas or failing to perform duties as fire warden), fire safety directors merely report the individual offenders to security officers or supervisors. The remedying of fire safety violations that are reported to the Employer and its customers are their responsibility. Further enforcement of Local Law 5, such as issuing citations, rests with the fire department. Thus, as in *BPS*, there is no evidence that the fire safety directors or deputy fire safety directors actually perform any security functions normally performed by guards, e.g., guarding entrances and exits or investigating thefts or vandalism. Therefore, they do not meet the statutory definition of guard.

The Employer relies on *Wright Memorial Hospital*, 255 NLRB 1319 (1980), to support its claim that an employee's duty to report rule infractions to his or her supervisor confers guard status. However, *Wright* is not strong support for the Employer's position. The ambulance employees at issue in *Wright* were responsible for security rounds, locking and unlocking doors, checking for theft and vandalism, in addition to reporting "irregularities" to hospital department heads. The Board, noting that the hospital had no

other security personnel, found the ambulance employees to be statutory guards.

Similarly, other cases cited by the Employer<sup>4</sup> involved employees whose responsibilities overlapped or superseded security operations, including monitoring security devices, checking packages, observing shift changes, locking and unlocking doors, and making hourly rounds.

In the instant case, there is no evidence that the Employer's fire safety directors and deputy fire safety directors are assigned to monitor security systems, investigate suspicious activity, guard entrances and exits, inspect packages, or enforce rules concerning trespassing, loitering, vandalism or theft. The record also indicates that fire safety directors are not deputized, bonded or trained in security functions. Significantly, the evidence indicates that the duties of deputy fire safety director Jonas remained the same during a Verizon strike while security forces were increased. Although fire safety directors conduct regular building inspections, their patrols entail checking only fire safety systems, equipment, and procedures. Further, fire safety directors bear none of the indicia of traditional security guards, such as uniforms, badges, weapons, radios or other security devices.<sup>5</sup> The record reveals that the sole function of fire safety directors and deputy fire safety directors is to perform fire safety and prevention duties as required by New York City Local Law 5. However, as noted above, fire safety directors and deputy fire safety directors are not responsible for remedying violations of, enforcing compliance with, or disciplining violators of fire safety regulations. Finally, the record does not

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<sup>4</sup> *MGM Hotel*, 274 NLRB 139 (1985) and *A. W. Schlesinger Geriatric Center, Inc.*, 267 NLRB 1363 (1983). The Employer also cites two decisions of the Regional Director of Region 2 of the National Labor Relations Board. As these are not decisions of the Board, they have no precedential value.

<sup>5</sup> The Employer emphasizes that fire safety directors interact with security officers in the event of an alarm or emergency. Interaction between these two job classifications occurs only in situations where security personnel are members of a fire brigade and are engaged in fire safety tasks rather than guard duties. Thus, these situations do not involve fire safety personnel functioning as guards, as the Employer seems to imply.

establish that the duties of the employees in question encompass traditional police and plant security functions as well as the enforcement of fire and safety regulations. In view of the foregoing and cognizant of the Congressional intention in enacting Section 9(b)(3) to avoid conflicting loyalties on the part of plant protection employees, I find that fire safety directors and deputy fire safety directors employed by the Employer are not guards within the meaning of Section 9(b)(3) of the Act. Accordingly, the petition raises a question affecting commerce concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following unit is appropriate for the purposes of collective bargaining:

All full-time and regular part-time fire safety directors and deputy fire safety directors employed by the Employer within the five boroughs of the City of New York (Manhattan, Queens, Brooklyn, the Bronx, and Staten Island), excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated

payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 1105, Communications Workers of America, AFL-CIO.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before July 19, 2001. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the

Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by July 26, 2001.

Dated at Brooklyn, New York, July 12, 2001.

/s/ Alvin Blyer  
Alvin Blyer  
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National Labor Relations Board  
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